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## *Legal Protection Guarantee Agricultural Land Pawn System*

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This study aims to determine and analyze the guarantee of legal protection for the agricultural land pawn system in Law No. 56 Prp 1960. The research method used by researchers in compiling this research is using sociological juridical research. This study uses a legal approach (state approach). The data obtained were arranged systematically so as to obtain a comprehensive picture, and by the researchers were processed using descriptive analytical techniques. As for the results of the research, namely the guarantee of legal protection for the land pawn system in Law Number 56 Prp of 1960, namely in the form of freeing ransom for the pawn system that has exceeded a period of 7 years which in that period has yielded crops.

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## 1. Introduction

Indonesia as a developing country strives to be able to realize its national goal, namely to improve the welfare of its people. In this effort, the economic sector is the main priority to improve the standard of living and welfare of the people. Various policies were made to increase and spur economic activity, providing convenience for economic actors to spread their business wings<sup>1</sup>. In opening a business, of course, funding is needed as a driving force for the business to run, of course, in seeking this funding requires a guarantee in obtaining funding from creditors, one way to obtain funding to do business is by mortgaging goods that will be used as collateral to obtain funding commitments from business entities. pawnshop.

As a way to overcome the difficulties in which the need for funds can be met without losing valuables, the community can pledge their goods to certain institutions. The collateralized goods can be redeemed at a certain time after the community has paid off the loan. The activity of lending valuable goods to obtain a certain amount of money and can be redeemed after a certain period of time is called a pawn business. The main purpose of the pawnshop business is to prevent people who are in need of money from falling into the hands of moneylenders or bondholders or loan sharks whose interest is relatively high.<sup>2</sup>. The guarantee institution arises because of two things, namely because of the law and because of the agreement. But keep in mind that the collateral in the pawn system is not only in the form of gold and electronic goods but also land (agricultural land).

This is emphasized in the Basic Agrarian Law (Law No. 5/1960) which aims to build a just and prosperous society based on Pancasila and the 1945 Constitution. Article 13 of this Law states in Paragraph (1) that the Government is trying to ensure that the Business in the agrarian field is regulated in such a way as to increase the production and prosperity of the people and guarantee for every Indonesian citizen a standard of living in accordance with human dignity, both for himself and his family. Article 7 of this Law also states that in order not to harm the public interest, ownership and exploitation of land that exceeds the limit is not permitted. As for other provisions in Article 53 in the UUPA Paragraph (1) rights that are temporary as referred to in Article 16 paragraph 1 letter h, are liens, profit-sharing business rights,

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<sup>1</sup>Niken Prasetyawati., and Tony Hanoraga. (2015). Material Security and Personal Security as Legal Protection Efforts for Receivable Owners, *Journal of Social Humanities*, 8 (1), 120

Meanwhile in Law no. 56 PRP of 1960 concerning Determination of Agricultural Land Areas emphasizes in article 7, Whoever controls agricultural land with a lien which at the time this regulation comes into force 7 years or more is obligated to return the land to its owner within a month after the existing plants are finished. harvested, with no right to demand a ransom payment.<sup>3</sup>

This regulation regulates the matter of pawning agricultural land, namely the relationship between a person and land belonging to another person, who owes money to him as long as the debt has not been paid in full, then the land remains in the control of the person who lent the money ("the holder of the pawn"). During that time the entire proceeds of the land became the rights of the holder of the lien, which thus constituted the interest on the debt. So far, land redemption depends on the willingness and ability of the pawner so that it can last for years, decades, and some are even continued by the heirs of the pawnbroker because they are unable to redeem the land.

Based on the consideration that the current state of the Indonesian farming community is landless farmers. Some of them are farm laborers, others work on other people's land as tenants or cultivators in a profit-sharing agreement relationship. In fact, it is not uncommon that in a pawn relationship the owners who pawn their land later become cultivators of their own land as profit-sharers. The possession of large tracts of land by the farmers also opens up the possibility of extortion in all forms (pawning) even though it is clear in the provisions of Article 7 that this is not permitted.

This is like what happened in West Bulotalangi Village, Bulango Timur District, Bone Bolango Regency. According to the acknowledgment of the owner of the agricultural land in the village, they have mortgaged their land to another party due to an urgent need and for more than 10 years they have not been able to redeem the pawned agricultural land in the form of rice fields (2 hectares) with an amount of Rp. 25,000,000, - (twenty five million rupiah), and currently only as cultivators. According to him, he felt very lost because the results obtained from the land by the pawnbroker were excessive and profitable.

## 2. Method

The type of research in this research is sociological juridical which in other words is a

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<sup>2</sup>Habib Adjie Emmy., and Haryono Saputro. (2015). Legal Protection for Owners of Pawn Objects on Auction of Pawn Objects, *Journal of Business Law*, 1 (1), 51

<sup>3</sup>Elucidation of Article 7 of Law no. 56 Prp 1960

type of sociological legal research and can also be referred to as field research, namely examining applicable legal provisions and what happens in reality in society.<sup>4</sup>With a statute approach related to the legal issues being handled, namely by reviewing the Basic Agrarian Law No. 5 of 1960 and Law no. 56 PRP of 1960 concerning Determination of Agricultural Land Areas. Furthermore, the data obtained were arranged systematically so as to obtain a comprehensive picture, and by the researchers were processed using descriptive analytical techniques. That is, the researcher describes and provides an overview in the form of an explanation of the data obtained through observation and then analyzed based on applicable theories and principles by making predictions and studying implications which are then given conclusions.

### **3. Analyst and Discussion**

#### **3.1. Guarantee of Legal Protection for Agricultural Land Pawning System in Law no. 56 PRP 1960**

Legally, pawning agricultural land is contained in the 1945 Constitution of the Republic of Indonesia, especially in Article 33 paragraph (3) which states that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." , this is further elaborated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, then the researcher will refer to it by the abbreviation UUPA, but it only contains the main points and principles, the aim of which is to establish legal unity and simplicity. , because it contains the main points and principles in the agrarian sector. Therefore, implementing regulations or other statutory regulations are formed and compiled.<sup>5</sup>

Pawns are termed collateral, collateral, and collateral. Pawns according to the Civil Code or Burgerlijk Wetboek (BW) as contained in Article 1150 are:

"A right that is obtained by a debtor on a movable property, which is handed over to him by a debtor or by another person on his behalf, and which gives the debtor the power to take payment of the goods in advance over other debtors with the exception of fees. to auction the item and the costs that have been incurred to save

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<sup>4</sup>Suharsimi Arikunto, *Research Procedure A Practical Approach*, (Jakarta: Rineka Cipta, 2002), 126.

<sup>5</sup>Abdul Halim. (2020). *Legal Protection for Agricultural Land Pledge Holders*, *Open Journal System*, 18 (1), 2099

it after the item is pawned, which costs should take precedence".<sup>6</sup>

The pawn here is an *accessoir*, which is an addition to the loan agreement. The goal is to prevent debtors from neglecting to repay their debts. A lien is different from other material rights (mortgage rights, business rights or *eprecht* and usufructuary rights). A lien is a right that provides guarantees, namely guarantees for the repayment of a loan by handing over an item to the creditor. However, this lien does not include the right to use, enjoy or collect the results of the goods used as collateral. The lien cannot be divided, meaning that part of the lien is not erased just because part of the debt has been paid; the lien remains on the entire collateral of the goods.<sup>7</sup>

However, the pledge described in Article 1150 of the Criminal Code above is not the pawn referred to in this study. If the object of the pawn as in the Criminal Code is a movable object, then the pawn of agricultural land in this study is a fixed object in the form of agricultural land that is controlled by someone. In addition to the object in the form of agricultural land, the holder of the pawn also has the right to hold the collateral object and manage it and enjoy the results in accordance with the rules of customary law or Law no. 56/Prp/1960.

The lien rights both on agricultural land and building land were originally regulated by customary (agrarian) law. Then in the Basic Agrarian Law, liens are stated in Article 53 and linked to Article 52 paragraph 2 of the Basic Agrarian Law, which stipulates that as a right of a temporary nature it must be regulated to limit its characteristics which are contrary to the Basic Agrarian Law. even then it must be cultivated in a short time because liens contain elements of an extortion nature.<sup>8</sup>

As the executor of Article 53 of the Basic Agrarian Law, the regulation of Article 7 of Law no. 56 Prp 1960 concerning Determination of Agricultural Land Areas which regulates the return and redemption of pawned agricultural lands (the criminal sanctions are set out in Article 10). This article also aims to abolish land pawn transactions based on Indonesian customary law, but the judiciary in its application is still inconsistent, giving rise to dualism, namely land pawning based on national agrarian law and customary law.<sup>9</sup>The change in the legal basis of the land pawn sale agreement from the customary

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<sup>6</sup>Subekti and Tjitrosudibio, *Civil Code*, (Jakarta: PT Pradnya Paramita, 2009), 297.

<sup>7</sup>Abdul Aziz Dahlan, *Encyclopedia of Islamic Law*, (Jakarta: PT. Ichtiar Baru Van Hoeve, 2000), 383.

<sup>8</sup>Eddy Ruchiyat, *National Land Politics Until the Reformation Order*, (Bandung 2007), 65

<sup>9</sup>Ridwan Nurdin. (2009). *Sociological Review of Pawnshops on Agricultural Land, According to Law Number 56 Prp of 1960*, *Justisia Journal*, 4 (1), 61.

pawn sale provisions to the provisions for selling pawns as regulated in Article 7 of Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas is part of an effort to change the legal format towards a rational society.

The amendment was made on the basis of Article 53 paragraph 1 of the Loan which explains that liens are temporary rights and must be abolished in a short time. In addition, the sale of pawns requires customary provisions in practice to contain an element of exploitation, because the results received by the pawn holder from the land in question are generally greater than what constitutes proper interest on the pawn money received by the land owner and this is of course contrary to the nation's morals which are based on the values of Pancasila.

Based on the explanation above, it can be seen that humans as legal subjects have the right to be protected when carrying out a legal action. This also applies to the practice of pawning agricultural land, because the practice of pawning agricultural land is a form of transaction that is regulated in statutory regulations. As the regulation of agricultural mortgages is regulated in Law no. 56 Prp 1960 as contained in article 7 which states that:

(1) Whoever controls agricultural land with liens which have been in effect for 7 years or more is obligated to return the land to its owner within a month after the existing crops have been harvested, with no right to demand a ransom payment.

(2) Regarding liens which come into force. This regulation has not been implemented for 7 years, so the land owner has the right to ask for it back at any time after the existing plants have been harvested, by paying a ransom, the amount of which is calculated according to the formula:

$$(7 + ) - \text{lien time } 7 \times \text{lien,}$$
$$7$$

with the stipulation that at any time the lien has lasted for 7 years, the holder of the lien is obliged to return the land without payment of a ransom, within a month after the crops have been harvested.

(3) The provisions in paragraph (2) of this article shall also apply to liens held after the entry into force of this Regulation.

Based on the explanation of the article, the guarantee of legal protection for the perpetrators of agricultural pawning practices can be seen in Article 7 paragraphs (1) and

(2) which state that the maximum period of pawning land is 7 years and if the right has lasted for 7 years then the holder of the lien obliged to return the land to the pawnbroker without any ransom money within one month after the existing crops were harvested since the agreement was implemented.

In this regard, the researcher analyzes that the pawnbroker can control, manage and take the results of the agricultural land that was pawned by the pawnbroker even though the time limit in the agreement has expired, as long as the pawnbroker has not redeemed the pawn money for agricultural land. However, agricultural pawning practitioners who have pawned agricultural land for 7 years are given a guarantee of protection in the form of a ransom release after the harvest of crops that have been controlled and managed by the pawn holder. As stated in Article 7 of Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas, the control of agricultural pawned land may not be more than 7 years, so that if the practice of pawning has exceeded the stipulation period of 7 years and the holder of the agricultural pawn still controls, manages and harvests the crops, then the pawner has been given a guarantee of protection not to give any more ransom money to the holder of the pawn. In this case, the holder of the pawn may also add the pawn money (deepening of the pawn) before the end of the pawn agreement, giving rise to a new pawn agreement and automatically increasing the time in the pawn agreement. However, this must go through a statement process from both the holder and the fiduciary and the agreement must be in writing. The holder of the pawn may also add the pawn money (depending on the pawn) before the end of the pawn agreement, giving rise to a new pawn agreement and automatically increasing the time in the pawn agreement. However, this must go through a statement process from both the holder and the fiduciary and the agreement must be in writing. The holder of the pawn may also add the pawn money (depending on the pawn) before the end of the pawn agreement, giving rise to a new pawn agreement and automatically increasing the time in the pawn agreement. However, this must go through a statement process from both the holder and the fiduciary and the agreement must be in writing.

Regarding the return of agricultural land pledges that have been regulated in Law no. 56 Prp of 1960, namely without paying a penny after it has lasted for 7 years, as based on the calculation of the average yield of the harvest and has been added with proper interest as in the general explanation number 9b, 6th and 7th sentences of Law Number 56 Prp of 1960 1960 which reads as follows:

According to the calculation, the average mortgage holder has received back from the proceeds of his land within 5-10 years, plus an appropriate interest (10%). In this regard,

it is determined that land that has been pawned for 7 years or more must be returned to the owner without the obligation to pay a ransom.

In article 7 above in paragraph (2) where it is explained that if the land pledge has not lasted for 7 years, it can be stated with the following example: Pawn money in the amount of Rp. 28,000,000 and the pawn has lasted for 6 years, then the ransom is:

$$\frac{7 + - 6 \times \text{Rp. } 28,000,000.,}{7} =$$

Rp. 12,000,000, 00 so the proceeds received by the pledge holder for 6 years are considered as 6 installments @ Rp. 4,000,000,- plus interest.

While the factor  $1/2$  on  $(7+1/2)$  is intended as compensation if the mortgage does not last for 7 years.<sup>10</sup>This factor proves that there is concern for the pawnee so that the expected profit from working on the pawned land for 7 years is not too achieved. However the pawnee has helped the pawnbroker by providing a sum of money in a short period of time. Therefore, if the mortgage on agricultural land does not last for 7 years, then the law provides compensation for 1 year in factor 1.

Therefore, the right of retention is also a form of protection for the holder of the lien to continue to control the agricultural land he controls with a lien even though the time limit in the pledge agreement has expired and the pledger has not been able to redeem it. However, for its control, it is still guided by the laws and regulations which state that the limit of ownership of agricultural land pawns is 7 (seven) years.

### **3.2. Guaranteed Legal Protection by the West Bulotalangi Village Government**

Indonesia regulates land pawning in addition to national law, there is also customary law that has been passed down from generation to generation in a society that has its own concept related to it. So no matter how simple a society is, they will always have their own guarantee institutions and laws.

The guarantee institution, namely the pawn guarantee, is one of the many engagements according to customary law which has a basic nature, that any form of agreement in customary law will always start on the basis of psychology, kinship and mutual assistance which is in line with the behavior and personality of the Indonesian people

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<sup>10</sup>Refliza. (2015). Legal Studies on Land Pawning in Minangkabau Society in Sungayang District After the Enactment of Law No. 56/Prp/1960 concerning Determination of Agricultural Land Area, *Permis Law Journal*, 1, 9



who always prioritize cooperation, mutual cooperation and concern for others.<sup>11</sup>The community in West Bulotalangi Village is no exception, as in the implementation of the pawn of agricultural land the object is not labor or plants, but land. Because the object is land, it must be done with the knowledge of the village head, so that the formation of legal norms is essentially a statutory regulation needed by the village.<sup>12</sup>This is in order to obtain stronger legal certainty.

In line with the opinion of Effendi Warin, that pawning is usually done in front of the village head or customary head. The presence of the official is generally not a condition for the validity of the pawn, but rather to strengthen his position, so as to reduce the risk of the lien holder if later there is a rebuttal. Pawning - a pawn without a written deed or evidence will cause difficulties for the holder of the lien, because the pawnbroker can at any time sell the land or pawn it back to a third party before the time in the agreement ends or the pawner has not redeemed (paid off) the pledged money it to the lien holder. In addition, it also creates difficulties for the pawnbroker because of the length of time the pawn of the agricultural land and redemption have been agreed upon by both parties. And if the pawnbroker wants to redeem it, then the pawnbroker denies it on the grounds that the agreement is not a pawn agreement, but a free sale agreement.<sup>13</sup>

The pawn can continue as long as the pawner still has not made a refund, it can even be transferred to the heirs of the pawn holder, resulting in a land pawn that lasts for decades. the land, then as long as the holder of the pawn still controls the land and the holder of the pawn can still enjoy the results or take benefits from the land in question, it could even be that the result could be greater than the amount of money given to the owner of the land at the time of the transaction. ,or the nature of this exploitation because the yield received by the pawnbroker from the land in question is generally greater than what constitutes proper interest on the pledged money received by the pawnbroker.<sup>14</sup>

In fact, eradicating habits that are already firmly rooted in people's lives is certainly not an easy thing, but at least there is an effort to reduce the characteristics that are contrary to the law. This is very important to provide legal protection for the people who give pawns with a weak economy. To reduce this extortionist behavior, it is further regulated

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<sup>11</sup>Esti Ningrum. (2013). Assurance of Legal Certainty and Protection of Land Pawn Agreements according to Existing Law, *Journal of Law Cakrawala*, 15 (41).

<sup>12</sup>Fence M. Wantu. (2020). The Position of Village Regulations in the System of Formation of Legislative Regulations. *Journal of Ius Civile*, 4(2), 201.

<sup>13</sup>Effendi Warin, *Agrarian Law in Indonesia*, (Jakarta: Rajawali Press, 1991), 307.

<sup>14</sup>Faridy. (2018). Implementation of Pawning of Agricultural Land in Rural Communities (Juridical Analysis of Law Number 56 Pnrp 1960). *JAKAM*, 2 (1), 67

in Article 7 of Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas.

Based on the explanation above, it can be seen that the government has guaranteed legal protection to the community regarding the implementation of pawning practices based on Law no. 56 Prp 1960 however, in reality this regulation is not used properly by the Indonesian people, especially the people of West Bulotalangi Village. This is evidenced by the results of the research where the researcher found that the sale and purchase of pawn transactions in West Bulotalangi Village was not carried out in accordance with existing regulations. As the results of the interview with the Village Head, Mr. Herson Hunawa, who stated that:

In general, the West Bulotalangi village government does not record the sale of pawn transactions. The local community who made the pawn transaction never reported it to the village, the transaction was only agreed upon and attended by the person concerned and did not involve village officials in it.

Based on this, it can be seen that in practice, the people of West Bulotalangi Village prefer to use pawn transactions in a familial way than using national law. This is due to public ignorance about the existence of regulations governing the implementation of the practice of pawning agricultural land. This is evidenced by the lack of coordination with the village government regarding agricultural land pawn transactions.

In this regard, the researcher analyzes that since the enactment of Law no. 56 Prp 1960 concerning Determination of Agricultural Land Areas until now, the people of West Bulotalangi Village do not yet know and understand the rules regarding the implementation of the practice of land pawning. This is due to the absence of socialization or legal counseling held by the village government to the community regarding the rules governing the practice of pawning the land. So that in the implementation of the practice of pawning, there is no coordination between the village government and the community. Ignorance and misunderstanding of these rules make people practice pawning in a family or personal way between the pawnbroker and the pawn holder.

The village government is a government institution in charge of managing the village level area. In this case, the organizers of government affairs and the interests of the local community. For this reason, the community's interest in carrying out a legal process, in this case the implementation of the practice of pawning by the community should be one of the responsibilities of the village government and should get the attention of the village

government in supervising and facilitating the interests of the community in terms of the pawn practice. The role of the village government in terms of providing protection and prioritizing the interests of the community is important in ensuring all forms of community problems, especially in the practice of pawning.

#### **4. Conclusion**

Law Number 56 prp of 1960 is a legal certainty that can be a guarantee of legal protection against the agricultural land pawn system. The regulation has guaranteed legal protection for someone who practices pawning in agriculture who has had a harvest and has reached 7 years. As it has been stated that a pawn transaction that has reached 7 years and after having the harvest, must be returned without any ransom. The guarantee of legal protection against the practice of pawning is also supported by criminal sanctions in the form of imprisonment and fines for someone who violates these regulations. In fact, it is different, where in West Bulotalangi Village there are pawn transactions carried out by the community not based on existing laws.

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